

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DEANDRE LEWIS,

Plaintiff,

v.

IRS, et al.,

Defendants.

Case No. 1:21-cv-01653-NONE-EPG

SCREENING ORDER

ORDER FOR PLAINTIFF TO:

(1) FILE A FIRST AMENDED COMPLAINT;

(2) NOTIFY THE COURT THAT HE WISHES
TO PROCEED ONLY ON HIS CLAIMS
REGARDING FAILURE TO RECEIVE
ECONOMIC IMPACT PAYMENTS; OR

(3) NOTIFY THE COURT THAT HE WISHES
TO STAND ON HIS COMPLAINT

(ECF No. 1)

THIRTY (30) DAY DEADLINE

Plaintiff Deandre Lewis is a state inmate proceeding *pro se* and *in forma pauperis* in this civil action. Plaintiff filed his complaint on November 15, 2021. (ECF No. 1). The complaint is now before this Court for screening.

For the reasons given below, the Court finds that Plaintiff's claims against the IRS and the Department of Treasury¹ regarding his failure to receive economic impact payments should proceed past screening. The Court concludes that the complaint does not state any other claims.

¹ The Court is not making a determination that the IRS or the Department of Treasury are the appropriate Defendants for such a claim.

1 Plaintiff now has options as to how to proceed. Plaintiff may file an amended complaint if
2 he believes that additional facts would state additional claims. If Plaintiff files an amended
3 complaint, the Court will screen that amended complaint in due course. Alternatively, Plaintiff
4 may file a statement with the Court saying that he wants to go forward only on the claims found
5 cognizable in this order. If Plaintiff files a statement that he wants to go forward only on these
6 claims, the Court will authorize service of process on the IRS and the Department of Treasury and
7 the case will proceed on the claims against these Defendants. Finally, Plaintiff may file a
8 statement with the Court saying that he wants to stand on this complaint and have it reviewed by
9 a district judge, in which case the Court will issue findings and recommendations to a district
10 judge consistent with this order.

11 **I. SCREENING REQUIREMENT**

12 The Court is required to screen complaints brought by prisoners seeking relief against a
13 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a); *see*
14 *Hulsey v. Mnuchin*, No. 21-cv-02280-PJH, 2021 WL 1561626, at *1 (N.D. Cal. Apr. 21, 2021)
15 (screening similar allegations under § 1915A(a) brought against former United States Secretary of
16 the Treasury Steven Mnuchin). The Court must dismiss a complaint or portion thereof if the
17 prisoner has raised claims that are legally “frivolous or malicious,” that fail to state a claim upon
18 which relief may be granted, or that seek monetary relief from a defendant who is immune from
19 such relief. 28 U.S.C. § 1915A(b)(1), (2). As Plaintiff is proceeding *in forma pauperis*, the Court
20 also screens the complaint under 28 U.S.C. § 1915. (ECF No. 3). “Notwithstanding any filing fee,
21 or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the
22 court determines that” the action is “frivolous or malicious” or “fails to state a claim upon which
23 relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(i)-(ii).

24 A complaint is required to contain “a short and plain statement of the claim showing that
25 the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
26 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
27 conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell*
28 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). A plaintiff must set forth “sufficient

1 factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Id.*
 2 (quoting *Twombly*, 550 U.S. at 570). The mere possibility of misconduct falls short of meeting
 3 this plausibility standard. *Id.* at 679. While a plaintiff’s allegations are taken as true, courts “are
 4 not required to indulge unwarranted inferences.” *Doe I v. Wal-Mart Stores, Inc.*, 572 F.3d 677,
 5 681 (9th Cir. 2009) (citation and internal quotation marks omitted). Additionally, a plaintiff’s
 6 legal conclusions are not accepted as true. *Iqbal*, 556 U.S. at 678.

7 Pleadings of *pro se* plaintiffs “must be held to less stringent standards than formal
 8 pleadings drafted by lawyers.” *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010).

9 **II. SUMMARY OF PLAINTIFF’S COMPLAINT**

10 Plaintiff filed his complaint on a “Civil Rights Complaint by a Prisoner” form. (ECF No.
 11 1, p. 1). As for the right that Plaintiff asserts was violated, his single cause of action identifies no
 12 federal civil right. (*Id.* at 3).

13 However, Plaintiff states that he has “not received 1, 2, or 3 of [his] CARES Act
 14 government stimulus payment[s].” ² (*Id.*). He requested a recent credit report from Experian and
 15 TransUnion, informing them that his identity had been stolen, but no one wrote him back.
 16 Plaintiff submitted two 14039 forms³ to the Department of Identity Theft, but no one wrote him
 17 back. (*Id.*). He also wrote letters to local and state agencies asking for help, but no one wrote him
 18 back. He states that all Defendants have failed to intervene in the theft of his identity. (*Id.*).

19 As for relief, Plaintiff requests that the Defendants investigate his missing stimulus
 20 payments and the IRS issue him his stimulus payments. (*Id.*).

21 **III. ANALYSIS OF PLAINTIFF’S COMPLAINT**

22 **A. Statutes Providing Economic Impact Payments**

23 Three Federal Acts are implicated in this action: the Coronavirus Aid, Relief, and
 24 Economic Security Act (CARES Act), passed on March 27, 2020, Pub. L. 116-136, 134 Stat. 281
 25 (2020); the Consolidated Appropriations Act, 2021 (CAA), passed on December 27, 2020, Pub.

27 ² Minor alterations, such as altering punctuation, have been made to Plaintiff’s quoted statements without
 28 indicating each specific change.

³ Form 14039, provided by the Department of Treasury, is an affidavit used for victims of identity theft.

L. 116-260, 134 Stat. 1182 (2020); and the American Rescue Plan Act of 2021 (ARPA), passed on March 11, 2021, Pub. L. 117-2, 135 Stat. 4. Each of these acts provided for EIPs (or advanced refunds) to be issued to “eligible individual[s]”: \$1200.00 under the CARES Act, 26 U.S.C. § 6428(a)-(d); \$600.00 under the CAA, 26 U.S.C. § 6428A(a)-(d); and \$1400.00 under the ARPA, 26 U.S.C. § 6428B(a)-(d).

Under the CARES Act and CAA, an “eligible individual” is any individual other than (1) a nonresident alien, (2) “any individual with respect to whom a deduction under [26 U.S.C. § 151] is allowable to another taxpayer for a taxable year beginning in the calendar year in which the individual’s taxable year begins,” and (3) an estate or trust. 26 U.S.C. § 6428(d)(1)-(3); 26 U.S.C. § 6428A(d)(1)-(3). Under the ARPA, an “eligible individual” is any individual other than (1) a nonresident alien, (2) “any individual who is a dependent of another taxpayer for a taxable year beginning in the calendar year in which the individual’s taxable year begins,” and (3) an estate or trust. 26 U.S.C. § 6428B(c)(1)-(3). Moreover, at least one court has held that incarcerated persons are “eligible individuals” to receive EIPs under the CARES Act. *Scholl v. Mnuchin*, 494 F. Supp. 3d 661, 689 (N.D. Cal. 2020).

B. Plaintiff’s Claims

Here, Plaintiff asserts that he has not received from the IRS and Department of Treasury any of the EIPs provided by the CARES Act, the CAA, or the ARPA. (ECF No. 1, p. 3) (“I have not received my 1, 2, or 3 of my CARES Act government stimulus payment[s].”).

Given the legal discussion above, the Court will allow his claims against the IRS and the Department of Treasury for non-receipt of EIPs to proceed past the screening stage.⁴

⁴ The Court notes that some courts have concluded that there is no private right of action under the CARES Act, the CAA, and the ARPA. *See, e.g., Puckett v. U.S. Dep’t of Treasury Internal Revenue Serv.*, No. 1:21 CV 425, 2021 WL 2550995, at *2 (N.D. Ohio June 22, 2021) (“[Plaintiff] has not pointed to any such statute nor has he referred the Court to any statutory or case law authority which would allow him to maintain an action against the United States under the CARES Act for receipt of specific non-disbursed funds. The CARES Act did not establish a private right of action to dispute the IRS’s determination of an individual’s eligibility for the EIP.”); *Walters v. Mnuchin*, No. 3:21-cv-275-JD-MGG, 2021 WL 2105387, at *4 (N.D. Ind. May 25, 2021) (“[T]here is no suggestion there is a private cause of action under the CARES Act for receipt of specific non-disbursed funds. . . .”); *Harden v. Yellen*, No. 21-cv-0362-BHL, 2021 WL 1515478, at *2 (E.D. Wis. Apr. 16, 2021) (concluding there was no private cause of action for incarcerated plaintiff to recover EIPS under the CARES Act, the CAA, and the ARPA). However, at least one court has allowed a claim to proceed past screening concerning a plaintiff’s failure

1 However, to the extent that Plaintiff alleges that the IRS, the Department of Treasury,
 2 Experian, and TransUnion “failed to stop and/or intervene in the illegal theft of [his] identity,”
 3 Plaintiff fails to state a claim. (ECF No. 1, p. 3). Plaintiff identifies no legal basis to bring a cause
 4 of action (nor is the Court aware of any) against Defendants based on their alleged failure to stop
 5 his alleged identity theft from occurring, nor does he explain his basis for concluding that his
 6 identity was stolen. Accordingly, Plaintiff has failed to offer a short and plain statement showing
 7 that he is entitled to relief in order to give the Defendants fair notice of what his claim is and the
 8 grounds upon which it rests. *See Twombly*, 550 U.S. at 555 (discussing Fed. R. Civ. P. 8(a)(2)).

9 IV. CONCLUSION AND ORDER

10 The Court has screened Plaintiff’s complaint and finds that, for screening purposes,
 11 Plaintiff’s claims against the IRS and the Department of Treasury regarding Plaintiff’s failure to
 12 receive economic impact payments should proceed past screening. The Court finds that Plaintiff
 13 fails to state any other cognizable claims.

14 Under Rule 15(a)(2) of the Federal Rules of Civil Procedure, “the court should freely give
 15 leave [to amend] when justice so requires.” Accordingly, the Court will provide Plaintiff with
 16 time to file an amended complaint, so that Plaintiff can provide additional factual allegations.
 17 *Lopez v. Smith*, 203 F.3d 1122, 1126-30 (9th Cir. 2000). Plaintiff is granted leave to file an
 18 amended complaint within thirty days.

19 If Plaintiff chooses to amend his complaint, in his amended complaint he must state what
 20 each named defendant did that led to the deprivation of his constitutional or other federal rights.
 21 Fed. R. Civ. P. 8(a); *Iqbal*, 556 U.S. at 678; *Jones v. Williams*, 297 F.3d 930, 934 (9th Cir. 2002).

22 Plaintiff should note that although he has been given the opportunity to amend, it is not for
 23 the purpose of changing the nature of this suit or adding unrelated claims. *George v. Smith*, 507
 24 F.3d 605, 607 (7th Cir. 2007) (no “buckshot” complaints).

25
 26 to receive EIPs. *See Terry v. Yellen*, No. 3:21-cv-33, 2021 WL 2587237, at *2 (S.D. Ohio June 24, 2021)
 27 (allowing claim for EIPs under the CARES Act, the CAA, and the ARPA to proceed past initial
 28 screening). This Court has not found any precedent from the Ninth Circuit on this point. By allowing the
 case to proceed past screening, the Court is not precluding Defendant from moving to dismiss based on a
 lack of private right of action or any other grounds.

1 Plaintiff is advised that an amended complaint supersedes the original complaint, *Lacey v.*
2 *Maricopa County*, 693 F 3d. 896, 907 n.1 (9th Cir. 2012) (en banc), and it must be complete in
3 itself without reference to the prior or superseded pleading, Local Rule 220. Therefore, in an
4 amended complaint, as in an original complaint, each claim and the involvement of each
5 defendant must be sufficiently alleged. The amended complaint should be clearly and boldly
6 titled “First Amended Complaint,” refer to the appropriate case number, and be an original signed
7 under penalty of perjury.

8 Plaintiff has choices on how to proceed. Plaintiff may file an amended complaint if he
9 believes that additional facts would state additional claims. If Plaintiff files an amended
10 complaint, the Court will screen that amended complaint in due course. Alternatively, Plaintiff
11 may file a statement with the Court saying that he wants to go forward only on the claims found
12 cognizable in this order. If Plaintiff files a statement that he wants to go forward only on these
13 claims, the Court will authorize service of process on the IRS and the Department of Treasury and
14 the case will proceed on the claims against these Defendants. Finally, Plaintiff may file a
15 statement with the Court saying that he wants to stand on this complaint and have it reviewed by
16 a district judge, in which case the Court will issue findings and recommendations to a district
17 judge consistent with this order.

18 Based on the foregoing, it is HEREBY ORDERED that:

- 19 1. The Clerk of Court is respectfully directed to mail Plaintiff a *pro se* complaint for
20 a civil case (Form Number: Pro Se 1);
- 21 2. Within thirty (30) days from the date of service of this order, Plaintiff shall either:
 - 22 a. File a First Amended Complaint;
 - 23 b. Notify the Court in writing that he wishes to proceed only on his claims
24 against the IRS and the Department of Treasury regarding Plaintiff’s failure to receive
25 economic impact payments; or
 - 26 c. Notify the Court in writing that he wants to stand on this complaint;
- 27 3. If Plaintiff chooses to file an amended complaint, Plaintiff shall caption the
28 amended complaint “First Amended Complaint,” refer to case number 1:21-cv-01653-

NONE-EPG; and

4. Failure to comply with this order may result in the dismissal of this action.

IT IS SO ORDERED.

Dated: **December 3, 2021**

/s/ Eric P. Grogan
UNITED STATES MAGISTRATE JUDGE